

# **EXHIBIT A**

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10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12 ALL NIPPON AIRWAYS COMPANY, )  
 13 LTD. )  
 14 Plaintiff, )  
 15 vs. )  
 16 UNITED AIR LINES, INC., )  
 17 Defendant. )

Case No. C07-03422 EDL  
 Hon. Elizabeth D. Laporte

**DECLARATION OF SCOTT  
 R. TORPEY IN SUPPORT OF  
 MOTION TO SHORTEN TIME  
 UNDER CIV. L.R. 6-3**

18 **DECLARATION OF SCOTT R. TORPEY**

19 **STATE OF MICHIGAN )**  
 20 **) SS.**  
 21 **COUNTY OF OAKLAND )**

I, Scott R. Torpey, having been duly sworn, hereby state the following:

22 1. I am a partner at the law firm of Jaffe Raitt Heuer & Weiss, P.C., in Southfield  
 23 Michigan. I am duly licensed and qualified to practice law in California. I represent defendant  
 24 United Air Lines, Inc., ("United") in the above-captioned matter, which All Nippon Airways  
 25 Company, Ltd., ("ANA") filed against United on June 28, 2007. I make this Declaration pursuant to  
 26 Fed. R. Civ. P. 37 and Civ. L.R. 1-5(n), 6-3 and 37-1.  
 27  
 28

1           2.       On December 21, 2007, United filed a Notice of Motion and Motion to Compel  
2       Discovery and for Additional Time to Depose Witnesses ("Motion"), setting the matter for hearing  
3       on Tuesday, January 29, 2008. The motion was subsequently rescheduled to Wednesday, January  
4       30, 2008.

5           3.       In support of the Motion, United filed a Memorandum of Points and Authorities fully  
6       discussing the issues involved in the Motion and the relief United sought. (Docket No. 45).

7           4.       On January 9, 2008, ANA filed its Memorandum in Opposition to United's Motion to  
8       Compel Discovery and for Additional Time to Depose Witnesses. (Docket No. 47).

9           5.       On January 16, 2008, United filed its Reply to ANA's Opposition. (Docket No. 49).

10          6.       On January 22, 2008, the Court entered an order denying United's Motion without  
11       prejudice based upon a finding that the Declaration of Scott Torpey submitted in support of the  
12       Motion did not contain sufficient facts to demonstrate compliance with the meet and confer  
13       requirement of the Civil Local Rules. (Docket No. 50). In pertinent part, the Court stated the  
14       following in the order:

15               It is hereby ORDERED that UAL's motion is DENIED WITHOUT PREJUDICE.  
16               UAL may refile its motion after its counsel meets and confers with ANA's counsel  
17               about the issues in UAL's motion. Counsel shall meet and confer through good faith,  
18               detailed, face-to-face or telephonic conversations about the issues raised in the  
19               motion. If the parties have unresolved issues after doing so, the Court will resolve  
20               those issues. The Court will entertain a request to shorten time on such a motion.

21       (Docket No. 49, pp 1-2).

22          7.       On January 24, 2008, while in California for a deposition in this case, I had a face-to-  
23       face meeting with Marshall Turner and Scott Cunningham, counsel for ANA, to discuss the  
24       discovery issues raised in United's Motion to Compel.

25          8.       On January 25, 2008, I had a second face-to-face meeting with Mr. Turner and Mr.  
26       Cunningham during which we again discussed the issues raised in United's Motion. These meetings  
27       resolved some, but not all, of those issues. Specifically, ANA produced a copy of the *current*  
28       version of its Japanese-language Operations Manual and agreed to produce the personnel files of  
pilots Yusuke Nishiguchi, Eishin Yamaguchi and Teruo Usiu following the entry of a protective  
order. Other issues raised by the motion remain in dispute. To address these unresolved issues,

1 United has filed a Renewed Motion to Compel Discovery and for Additional Time to Depose  
2 Witnesses (the "Motion").

3 9. United requests a hearing on its Motion and further requests, pursuant to Civ. L.R. 6-  
4 3, that the 35-day motion notice period of Civ. L.R. 7-2(a) be shortened so that this Motion can be  
5 heard on **Tuesday, February 19, 2008, at 9:00 a.m.**

6 10. United requests that the time for the hearing be shortened so that the discovery issues  
7 addressed in the Motion can be decided well before mediation, which is scheduled to take place on  
8 or before April, 2008. (Docket No. 24). The requested materials are essential to United's  
9 preparation for mediation, and if ANA's flight crew is to be re-deposed, as requested in the Motion,  
10 those depositions should take place prior to the mediation as well. If the 35-day notice period is  
11 adhered to, which would put the hearing in early March, it will be virtually impossible for United to  
12 obtain all of the documents it has requested, review the documents, have its experts review the  
13 documents and conduct the depositions before mediation. Civ. L.R. 6-3(a)(1), (3). Therefore,  
14 United would be prejudiced if the time for hearing the Motion is not shortened. Further, no  
15 prejudice would result to ANA if the Motion is heard on an expedited basis because it is well aware  
16 of, and has already had an opportunity to brief, the issues involved in the Motion.

17 11. During the meet and confer meetings described above, I sought Mr. Turner's  
18 concurrence in this request to shorten the time for hearing the Motion, but concurrence was denied.  
19 Civ. L.R. 6-3(a)(2).

20 12. Pursuant to Civ. L. R. 6-3(a)(4)(i), United's compliance with the requirements of  
21 Civil L.R. 37-1(a) is described above. As previously noted, ANA has produced its current,  
22 Japanese-language Operations Manual and has agreed to produce the personnel files of the flight  
23 crew, subject to a protective order. Other issues raised by the Motion remain unresolved.  
24 Specifically, United seeks an order:

- 25 a. Compelling ANA to produce the following documents responsive to the document  
26 requests contained in the Notice and Amended Notices of Taking Video Depositions  
27 of Yusuke Nishiguchi, Eishin Yamaguchi and Tereo Usui: (i) ANA's current  
28 Operations Manual and the Manual that was in effect on October 7, 2003 (both the  
English and Japanese versions, except for the current Japanese version, which has  
been produced); (ii) All publications required to be on-board the ANA aircraft, as

1 they existed on October 7, 2003 and as they exist today; and (iii) all routing  
2 documents for the flight;

- 3 b. Compelling ANA to produce complete and unedited copies of the Cockpit Voice  
4 Recorder recordings from the flight;
- 5 c. Compelling ANA to produce Mr. Yamaguchi, Mr. Nishiguchi and Mr. Usui for  
6 continued depositions and to pay United's costs and fees for these continued  
7 depositions.
- 8 d. Awarding costs and fees to United for the expenses it incurred and will incur in  
9 bringing the motion

10 The parties' positions on the issues were fully discussed in United's Memorandum of Points and  
11 Authorities in Support of Motion to Compel Discovery and for Additional Time to Depose  
12 Witnesses (Docket No. 45), ANA's Opposition to United's Motion (Docket No. 47) and United's  
13 Reply to ANA's Opposition (Docket No. 48). Civ. L.R. 6-3(a)(4)(ii). In addition, United has  
14 submitted a Memorandum of Points and Authorities in support of its Renewed Motion to Compel  
15 and for Additional Time to Depose Witnesses addressing these issues.

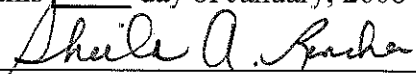
16 13. To my knowledge, there has been only one previous time modification in this case.  
17 Civ. L.R. 6-3(a)(5). The Court granted United's Motion to Shorten time to have its Motion for a  
18 Protective Order, filed on November 21, 2007, heard in less than 35 days. (Docket Nos. 38, 39, and  
19 40). ANA did not oppose this motion to shorten time.

20 14. This request to shorten the time for the hearing on United's Renewed Motion to  
21 Compel will have no effect on the scheduling order. Civ. L.R. 6-3(a)(6).

22 **FURTHER AFFIANT SAYETH NOT.**

23   
24 Scott Torpey

25 Subscribed and sworn to before me  
26 this 30th day of January, 2008

27   
28 Notary Public, Wayne County, MI

My Commission Expires: \_\_\_\_\_

SHEILA A. RENCHER  
Notary Public, Wayne County, MI  
My Commission Expires April 20, 2008

Acting in Oakland County, MI